

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

WESLEY GENE TATE, #1126120  
aka El-Shaheed Abdul-El Ali,

Petitioner,

v.

CIVIL ACTION NO. 2:15cv286

HAROLD CLARKE, Dir., Va. D.O.C.,

Defendant.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to his convictions on May 2, 2011, in the Circuit Court of Norfolk, Virginia for abduction, two counts of forcible sodomy, burglary and assault and battery of a family member. As a result of the convictions, petitioner alleges he was sentenced to 115 years with 74 years suspended for an active term of 41 years in prison.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed January 12, 2016, recommends dismissal of the petition. Each party was advised of his right to file written objections to the findings and recommendations made by

the Magistrate Judge. Petitioner sought leave to extend the time for filing objections (ECF No. 22), which the court granted on February 1, 2016 (ECF No. 23). On February 8, 2016, the court received petitioner's "Motion to Delay Ruling on Report and Recommendation" (ECF No. 24), along with his Objections to the Report and Recommendation (ECF No. 25).<sup>1</sup> The respondent filed no response to the objections and the time for responding has now expired.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed January 12, 2016. It is, therefore, ORDERED that petitioner's Motion to Amended Petition (ECF No. 8) is GRANTED and that his Motion to Appoint Counsel (ECF No. 16), Motion to Hire Investigator (ECF No. 17), Amended Motion to Hire Investigator (ECF No. 20), Amended Motion to Appoint Counsel (ECF No. 21), and Motion to Stay (ECF No. 24) are DENIED. It is further ORDERED that respondent's Motion to Dismiss (ECF No. 9) be GRANTED and the petitioner's petition be DENIED and DISMISSED with prejudice.

Petitioner is hereby notified that he may appeal from the

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<sup>1</sup> Prior to petitioner's motion to stay and objections to the R&R, he filed an Amended Motion to Hire Investigator (ECF No. 20 and Amended Motion to Appoint Counsel (ECF No. 21), both of which were filed after the Report and Recommendation was filed and therefore not addressed in the R&R.

judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to petitioner and provide an electronic copy of the Final order to counsel of record for respondent.

/s/ *MSD*

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MARK S. DAVIS  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

February 29, 2016